IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3218 OF 2004

Shri Vasant Kashinath Mistry
Proprietor of Laxmi Bar & Restaurant..PETITIONER

Versus

State of Maharashtra & Ors.....RESPONDENTS

Mr. P.C. Kansara, for the Petitioner
Mr. K.R. Belosey, A.G.P. for Respondents.

CORAM: F.I. REBELLO J.
DATE : 10th December, 2004

P.C.:

. Pursuant to the order of this Court in Writ Petition No.765 of 2001 dated 27th February, 2001 the matter was remanded to the Licensing Authority for considering the application and dispose it of according to law. On remand the Licensing Authority by order dated 19th May, 2004 for the reasons set out therein was pleased to reject the application. The petitioner being aggrieved preferred an Appeal. The Appellate Authority after considering the arguments has noted the various arguments advanced on behalf of the petitioner herein in paragraph 6 of the order and thereafter noted that the documents which the appellant had to produce were not produced and for the first time before the Appellate Authority the said documents were sought to be produced. That aspect the learned Appellate Authority held had to be considered if the petitioner otherwise met with the other requirements.The Appellate Authority had noted that the Traffic Department had objected to the grant of the license on the ground that it

will cause traffic problem as it is situated on Andheri-Ghatkopar Link Road. While considering the objection the learned Appellate Authority noted that this Court in some other matter has held that by itself would not be ground for rejecting the application and further noted that in so far as rejection on the ground that the sound can be heard within 15 ft., periphery was not supported by any material and set aside the finding on that count. The Appellate Authority then noted that 5 cases have been registered under the sections set out in the order which were duly proved and punishment imposed. The Court also noted that a case is registered under Sections 3, 4, 5 and 7 of the PIT Act. The argument advanced on behalf of the petitioner was noted that the matter is subjudice, and that cannot be a ground for rejecting the application. Adverting to the judgment relied upon in the matter of pending case, the learned Appellate Authority held that the ratio of the judgment will be considered on the facts of the case and the present case the petitioner had been found guilty and convicted. In other cases it cannot be presumed that the appellant is not guilty. From the material available the learned Appellate Authority noted that the premises are used for the purpose which are not permissible to be used and for the aforesaid reasons rejected the Application.

2. The petitioner has an Eating House with a bar license. It is true that the petitioner will be entitled to apply for a license for the purpose which he has applied for. It is based on the material on record that the Authorities have to

consider whether the application should be granted or not.

3. In the instant case the impugned orders are challenged on the ground that the Appellate Authority had not given sufficient opportunity to the petitioner to make out his case. The Appeal was from the order of the first Authority. Considering that all the material that the appellant was to rely upon would be available as it was filed before that Authority. Secondly, from the order it is clear that the various arguments advanced on behalf of the petitioner herein were noted and, therefore, it cannot be said that the petitioner herein had no sufficient opportunity. The contention of the petitioner, therefore, that the order of the Appellate Authority should be set aside on that ground in my opinion cannot be sustained.

4. The orders of the Authorities below could only be set aside if it is disclosed that the orders suffer from an error apparent on the face of the record. In the instant case the Appellate Authority has noted the material on record, the Judgments of this Court and thereafter considering the material found that this will not be a fit case in the facts and circumstances to grant the license as prayed for. It cannot be said that the reasons given are not germane and/or irrelevant. Apart from that there is a case registered under P.I.T. Act. In my opinion this would not be a fit case for this Court to exercise its extra ordinary jurisdiction. Hence Writ Petition rejected.

(F.I.REBELLO, J.)